Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
FEDERAL-STATE JOINT BOARD ON	)	
UNIVERSAL SERVICE	)	**CC Docket No. 96-45**
	)	
RULES RELATING TO HIGH-COST	)	
UNIVERSAL SERVICE SUPPORT AND	)	
THE ELIGIBLE TELECOMMUNICATIONS	)	
CARRIER DESIGNATION PROCESS	)	
	)	

COMMENTS OF MOULTRIE INDEPENDENT TELEPHONE COMPANY

Moultrie Independent Telephone Company ("Moultrie") hereby submits its comments, pursuant to the Public Notice issued in the captioned proceeding.[1] The Public Notice asks for comments on whether the Commission's rules relating to high-cost universal service support should be modified for areas in which Eligible Telecommunications Carriers ("ETCs") are operating. The Commission seeks comments on, among other things, the process for designation of, and payment to, ETCs.

I The 1996 Act Requires the Commission To First Ensure that Competition in a Rural Area Is In the Public Interest Before Awarding Support for ETC Service

The Public Notice requests comments on competition in rural areas, including whether consumers in rural and high-cost areas have access to competitive alternatives for services provided by incumbent local exchange carriers ("ILECs"); whether there is a relationship

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[1] *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, FCC 03J-1, released Feb. 7, 2003 (*Public Notice*).

between competitive entry into rural markets and the receipt of high-cost support; and whether economic and business factors affect competitive entry into rural areas. *Public Notice*, paras. 12-14.

The Public Notice appears to be based on the premise that competition in rural areas is in the public interest. The Public Notice asks questions such as the following:

> [S]hould support in competitive areas be based on the lowest-cost provider's costs, in order to promote efficiency?
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> To the extent the costs of competitive ETCs are lower than the costs of incumbent LECs, what effect would such [lowest-cost] rules have on incumbent providers? and
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> [S]hould high-cost support be awarded to the ETC with the lowest bid for support in a designated service area ...?

Public Notice, paras. 19-20. These and similar questions indicate that the Commission is ignoring the realities of the provision of service in rural areas.

It is worth noting at the outset that Congress recognized that it would not necessarily be in the public interest to have more than one carrier in a rural area. Otherwise, Congress would have promoted competition in rural areas as it did in high-density areas. Instead, Congress directed state commissions to determine, on a market-by-market basis, whether competition would be in the public interest. 47 U.S.C. Sec. 214(e)(2). Section 214(e)(2) mandates:

> Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, ... designate more than one common carrier as an eligible telecommunications carrier for a service area, ... so long as each additional requesting carrier meets the requirements of [subparagraph 214(e)(1)]. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. Sec. 214(e)(2).

It is merely an academic exercise to examine wireline "competition" in rural markets. There is no wireline "competition" in a particular rural market until there is a request from a bona fide competitor requesting service authority from the state commission. Clearly, Congress intended for regulatory commissions, before designating an ETC in a rural market, to balance any consumer benefits of competition against the costs of supporting more than one carrier.

As a practical matter, supporting more than one facilities-based carrier in a rural area is not in the public interest unless the benefits exceed the costs of funding. Otherwise, universal service support would create inefficient competition. The portability of support is a critical issue that must be dealt with in a logical and equitable manner. While competition may work in heavily populated areas, it is frequently destructive in rural areas. In rural areas, competition may weaken the financial viability of the ILEC and the competing provider to the point where neither company can survive. Moultrie cannot conceive that it was the intent of Congress to put small rural ILECs out of business.

The Organization for Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") outlined the rural situation succinctly when it stated:

> If the overall demand for funding grows to an unsustainable level, then support payments will need to be frozen or even curtailed, resulting in serious operating challenges for many rural carriers. Such a situation will ultimately lead to deteriorating service quality, substantially higher rates, or even the financial failure of the carrier that serves as the 'lifeline' for the most remotely located consumers.[2]

Thus, it is critical for the FCC and Joint Board to ensure that high-cost support from the universal service program is not transportable to another carrier until such time as a public interest showing has been made in accordance with Section 254 and Section 214(e). It does not serve the public interest to fund competition in high-cost rural areas where the market is not fully sustaining one provider without support.

[2] Stuart Polikoff, OPASTCO, *Universal Service in Rural America: A Congressional Mandate at Risk*, at p. ix, Jan. 2003, submitted in CC Docket No. 96-45, filed March 6, 2003.

II Cost Support Allows Incumbent Local Exchange Carriers To Fully Recover Their Costs of Providing High Quality, Affordable Telecommunications Services

When universal service was established, there was a recognition of the need for contributions from low-cost, high profit services to higher-cost, less profitable services. Support through the high cost fund was designed to provide carriers with an avenue to recover the higher costs of providing services in the nation's rural territories. Support from customers of other service providers enables consumers in rural areas to have high quality, basic telecommunications services at affordable rates. Without this support, quality network operations and maintenance could suffer and rural ILECs could not remain viable providers.

Today, competitors are entering the rural telecommunications markets. If an ETC is able to provide service more cheaply than the existing ILEC serving the same area, it is because the ETC's actual costs are lower than those of an ILEC that has embedded facilities. Often a competitor has no appreciable investment risk, no operating capital tied up in infrastructure, no appreciable regulatory costs, and no long term commitment to customers. Moreover, these providers have the luxury of choosing to provide service only in areas where it is profitable to do so.

In some rural markets, the competitor entering the area is a wireless provider that has minimal investment in facilities when compared with the ILEC. Similarly, a wireline ETC generally has lower facilities costs than the ILEC. Most wireline ETCs resell services of another carrier, or provide services using leased lines or unbundled network elements ("UNEs") acquired from an ILEC.

By contrast, the small rural ILEC typically has a huge investment in embedded network facilities and equipment. In the current environment, technology evolves about once every twenty months. This means that a company needs continuously to renew its investment in the network. Otherwise, it will become susceptible to competition by other telecommunications providers because of its antiquated facilities and features. Ironically, this investment in the network does not translate to a favorable competitive position. Technological advantage is impossible to attain because there is a federal edict to allow competitors access to unbundled local loops and switches at a cost based upon the artificial retail pricing to end users. Even with continuous network investment, competitors can diminish the small rural ILEC's customer base to the point where its financial viability is jeopardized.

It is difficult, if not impossible, for a small telephone company to maintain financial viability in today's environment. Pressures are being exerted from many fronts. The smaller ILECs serve sparsely populated, low usage areas, which translates to higher costs of service. Small ILECs also bear a disproportionate cost of regulation because they are less able than larger carriers to absorb the added costs or to pass those costs on to their end user customers. Rural ILECs lack system density or customer density to respond to the competitive environment. Rural ILECs do not enjoy the economies of scope and scale possessed by the large Regional Bell Operating Companies and other large, nonrural carriers. Favorable efficiencies are derived from large-scale operations serving densely populated areas with high usage patterns. Large, non-rural carriers also have the ability to average their costs internally, an ability the rural carriers simply do not have.

Consequently, high-cost support is critical to rural ILECs. For some ILECs, it is a major source of funding and contributes to the financial viability of the company. The Joint Board and the FCC need to take these factors into account when modifying the high-cost support program so as not to threaten the ability of rural LECs to receive sufficient funding as required by Section 254.

III Support for an Eligible Telecommunications Carriers Should Be Based on Their Individual Costs of Service

The Public Notice asks whether cost support to an ETC should be based on its own costs, on the ILEC's costs or, perhaps, on the costs of the provider with the lowest costs. *Public*

Notice, paras. 18-19. Support to ETCs currently is based on the per-line support that the ILEC receives for the same line.[3]

Moultrie believes it would be more equitable to base any ETC support on that ETC's own costs rather than on the costs of the ILEC serving the area. If an ETC receives loop support based on the ILEC's higher costs, then the ETC likely would receive funds that exceed its own costs of providing service, in violation of Section 254(e). There is no basis upon which to presume that ETCs and ILECs have the same costs. As discussed above, the ETC's costs of service generally are considerably lower than those of the ILEC. Indeed, the Public Notice acknowledges that some ETCs providing service through UNEs purchased from the ILECs are now receiving support to cover the full cost of those UNEs. *Public Notice*, para. 21. In such cases, the ETCs have effectively no net cost for the UNEs and need only to cover their administrative and other operating costs. Instead, it appears that granting universal service support identical to that the ILEC receives would provide the ETC with an excessive amount of support.

The Public Notice asks what formula should be used to calculate support for the ETC and whether embedded or forward-looking costs should be used. *Public Notice*, para. 18. The formula used to determine ETC support should be based on a per-line unit to better reflect the number of lines ported to the ETC. If only a few lines are ported, costs should be based on the characteristics of those lines ported, rather than on the averaged costs of the total lines in the ILEC's affected study area. This would be consistent with the proposal of the Rural Task Force of the Federal-State Joint Board, which advocated allowing ILECs to disaggregate local rates and target per-line universal service support on a per-line basis.

The Public Notice also asks whether rural study areas should be disaggregated for purposes of providing support to ETCs. *Public Notice*, para. 35. Moultrie believes it is important not to create incentives for carriers to skim customers selectively from the ILECs. If

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[3] *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8932-34 (1997).

an ETC would receive universal service support based on the average costs of the rural ILEC regardless of which lines it serves, the ETC would have the incentive to offer service to the customers within that study area that can be served at the lowest cost. This would leave the ILEC serving the highest-cost customers and receiving compensation based on the averaged cost per line for those customers. Most rural ILECs would be financially unable to provide their services without universal service support. When a competitor comes into an otherwise uneconomic area and skims customers in order to obtain the corresponding universal service support, it does so to the detriment of the ILEC and ultimately the rural customers.

Several rural carriers have questioned disaggregation of study areas for the determination of support in areas subject to competition.[4] OPASTCO, NRTA and others argue that disaggregation of study areas would give the ETCs

> substantial ability to cherrypick areas to serve where their costs are lower than the averaged cost of the incumbent and the support available to them. ... Disaggregating the area a competitor must serve to obtain support also adds to the disparate burden on the incumbent to serve throughout its study area as the carrier of last resort, as well as shouldering the area-wide cost of CALEA implementation and other requirements that are proportionately more costly in parts of its service area.[5]

Moultrie encourages the Commission to consider these factors when determining how to calculate support for ETCs in rural areas.

IV The Commission Should Ensure that Support Is Sufficient for Recovery of Carrier Investments in the Network

The Public Notice asks parties to address how any proposed changes might effect investment in, and upgrades to, the network. *Public Notice*, para. 20. Technology constantly evolves and the FCC and Joint Board should seek to foster technological development, or at least

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[4] *See* Comments of NRTA, OPASTCO, Western Alliance and CTA, *Petition of Colorado Pub. Util. Comm'n pursuant to 47 CFR Sec. 54.207(c) for Commission Agreement in Redefining the Service Area of Century Tel. Of Eagle, Inc., a Rural Telephone Co.*, CC Docket No. 96-45, filed Sept. 27, 2002.

[5] *Id.* at 13.

ensure that policies do not stifle investment. Moultrie recommends that the Commission adopt a mechanism that will permit a company to update its network with more efficient technologies and receive support for those updates.

Companies making network upgrades and implementing new construction must receive "specific, predictable and sufficient" support to satisfy the requirements of the 1996 Act. 47 U.S.C. Sec. 254. Universal service support is not a subsidy program but is intended to provide recovery of network costs incurred by the rural ILEC for the public benefit. One goal of public policy is to encourage carriers to continue investing in the network that serves telecommunications consumers. Funding must remain sufficient to encourage continued private investment in public infrastructure.

Moultrie notes that facilities are not always owned by carriers but are sometimes owned by non-carrier entities. It appears that neither the Joint Board nor the Commission has considered this possibility. Investments in telecommunications facilities by unregulated entities not providing services fall outside the scope of regulation. These entities can choose to lease either facilities or capacity to service providers. The cost support system is based on the premise that carriers own the facilities over which they provide telecommunications services because the investment information in switching and local loop plant is used to calculate the support amount. The premise that carriers own the facilities over which they provide services has no basis of support in law or fact. There is no legal requirement in the Communications Act that carriers own these facilities. Facilities ownership is a matter of historical circumstance because regulated monopolies were encouraged to invest in facilities and their investments were fully compensated under the public interest standard. Moultrie previously raised these issues before the Commission.[6]

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[6] *Moultrie Indep. Tel. Co., Motion for Stay of Part 69.605(a) of the Commission's Rules and Petition for Declaratory Ruling, Request for Waiver of Part 36 of the Commission's Rules, Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, FCC 01-292, released Oct, 5, 2001; *appeal denied*, 2003 U.S. App. LEXIS 3904, Mar. 4, 2003; *petition for panel rehearing pending*, D.C. Cir. No. 01-1506, filed Apr. 14, 2003.

Nevertheless, there are carriers currently providing services without owning facilities, through leased facilities and leased capacity. This is true of both regulated ILECs and competitive carriers. As carriers without facilities enter the market and provide services, this will present a competitive necessity for facilities-based carriers to divest themselves of their facilities. This, in turn, will create an incentive for capital investors to provide capacity for lease to carriers. These entities will not be regulated carriers and will not report investment costs to regulators. When service providers transition to providing their services using leased capacity, they will report only lease expenses, rather than investment costs on which the support formulae are currently based. Thus, the current cost support system will remain sustainable only where ILECs continue to own the facilities they use to provide services.

In any case, as regards fully-regulated carriers that do own their facilities and that are investing in new or upgraded facilities, full cost recovery is essential. It is not in the best interest of the industry or the consumer to allow network development to stagnate due to uncertainty of cost recovery. Absent the cost-recovery support provided through the universal service program, many rural ILECs would not be able to provide high quality services at rates that are affordable to their customers. Moultrie believes this was not the outcome expected by Congress, the industry, or the public in promoting competition.

Conclusion

The 1996 Act contains the overarching requirement that state regulators determine that competition in a particular rural area is in the public interest. The Commission needs to affirm that requirement for a public interest finding, rather than launching headlong into providing cost support to ETCs. Cost support should ensure that carriers fully recover their costs of investing in the network over which they provide affordable, high quality services in these rural markets.

The Commission should base the cost support for ETCs on the ETC's own costs rather than on the typically higher costs of the ILEC. The ETC's cost support should be based on a per-line formula that reflects the cost characteristics of the lines ported to the ETC. In other words, a carrier would receive greater cost support for lines that necessitate higher costs. The Commission should ensure that carriers continue to receive full cost recovery for their investments in facilities. Even so, the Commission should be aware that market realities are changing the way carriers provide services, and that facilities may be owned by unregulated entities and the financial attributes thereof may not always be accessible for regulatory purposes.

Respectfully Submitted,

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Dated: May 5, 2003

CERTIFICATE OF SERVICE
WCB DOCKET CC 96-45

I, Daniella Knight, hereby certify that, on the 5th of May, 2003, I filed, via the FCC's Electronic Comments Filing System, a copy of the foregoing Comments of Moultrie Independent Telephone Company. In addition, this same day, I served a copy of the referenced Comments on the FCC's duplicating contractor Qualex International, Inc., and on the FCC staff and parties indicated on the attached service list. Service was made by hand delivery, except as otherwise indicated.

Signed:

Daniella Mattioli Knight

May 5, 2003

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